

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA

BARON MAYES

v.

UNITED STATES OF AMERICA

)  
)  
)  
)  
)  
)

No. 1:09-cv-178/1:07-cr-115  
*Mattice/Lee*

**MEMORANDUM**

Baron Mayes ("Mayes") has filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255<sup>1</sup> (Crim. Court Docs. 27 & 29).<sup>2</sup> Before the Court could docket its memorandum and judgment dismissing Mayes' § 2255 motion as time-barred, he filed a Notice of Dismissal With Prejudice (Crim. Court Doc. 37). Rule 12 of the Rules Governing Section 2255 Proceedings for the United States District Courts directs the Court to apply the Federal Rules of Civil Procedure to this notice since this section does not specify the procedure for resolving a notice of dismissal with prejudice.

Accordingly, Rule 41(a)(1) of the Federal Rules of Civil Procedure provides for voluntary dismissal by a plaintiff by filing a notice of dismissal at any time prior to service by the adverse party of an answer or of a motion for summary judgment. The Court has not directed the Clerk to serve the government in this case. For the foregoing reason Mayes' § 2255 motion is **DISMISSED WITH PREJUDICE** (Crim. Court Doc. 27 & 29). See

---

<sup>1</sup> Mayes initially filed an incomplete § 2255 motion (Crim. Court Doc. 27) but subsequently, pursuant to the Court's Order, filed a proper § 2255 motion (Crim. Court Doc. 29). The Court has treated the initial motion as a memorandum in support of his properly filed § 2255 motion.

<sup>2</sup> Each document will be identified by the Court File Number assigned to it in the underlying criminal case.

Rule 41(a)(1). The Clerk will be **DIRECTED** to notify the parties of the dismissal of this action and to close this file.

An appropriate order will enter.

/s/Harry S. Mattice, Jr.  
HARRY S. MATTICE, JR.  
UNITED STATES DISTRICT JUDGE